

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Dakotas Areawide IBEW-NECA Savings &)
Retirement Plan and Trust, Randy Bartsch)
and Edward S. Christian, and their)
successors, as Trustees,)

Plaintiff,)

vs.)

Lincoln National Life Insurance Company,)

Defendant.)

Case No. 3:21-cv-100

ORDER FOR SETTLEMENT CONFERENCE

IT IS ORDERED:

A settlement conference will be held before the court in Suite 440, Quentin N. Burdick United States Courthouse, 655 1st Avenue North, **Fargo**, North Dakota, on **December 1, 2021, at 10:00 AM.**

Parties and Counsel to Attend Conference

Each party, or an authorized representative of each party, together with trial counsel for each party, must attend the conference. An insured party need not attend unless the settlement decision will be made in part, or in whole, by the insured party. When the settlement decision will be made in whole or part by an insurer, the insurer shall send a representative, in person, with full and complete authority to make settlement decisions. A business entity shall send a representative with full and complete authority to bind the entity. A governmental entity shall send a representative authorized to act on its behalf. Failure to produce the appropriate person(s) at the conference and/or failure to participate in good faith may result in an award of costs and

attorney fees incurred by the other parties in connection with the conference and/or other sanctions against the noncomplying party and/or counsel.

At least **ten court days** prior to the conference, counsel must advise the court, and all other counsel, of the name(s) of the authorized representative(s) who will be present at the conference. The information shall be e-mailed to ndd_J-Senechal@ndd.uscourts.gov or mailed to the magistrate judge at Quentin N. Burdick U.S. Courthouse, 655 1st Avenue North, Suite 440, Fargo, ND 58102, with copies to all other parties. If any party has concerns about the identified representatives having sufficient authority to resolve the case, they should first discuss those concerns with the opposing party. If discussion with the opposing party does not resolve the issue, counsel should request an ex parte telephone conference with the court solely for the purpose of discussing those concerns.

No party or counsel will be permitted to leave the conference without the magistrate judge's permission. The parties and counsel should make travel plans accordingly.

Required Pre-Conference Preparation

In order to allow for the conference to proceed expeditiously, **prior to the settlement conference**, counsel for each party shall:

- (1) Contact any lienholders, or any entity with a potential subrogation interest, to determine the amount of any claimed lien or subrogation interest and the potential for compromise of that lien or subrogation interest. Counsel should endeavor to arrange for a representative of the lienholder or subrogee to be available by phone during the settlement conference. If counsel believe that it would be beneficial to have a

representative of the lienholder or subrogee present in person, they may request the court's assistance, if necessary, in encouraging the presence of a representative.

- (2) Confer with her or his client about expectations for the settlement, including a candid discussion of the strengths and weaknesses of the client's case.
- (3) Ensure that opposing counsel have received accurate calculation of, and documentation of, economic damages which form all or part of the basis of a settlement demand.

Recommended Pre-Conference Preparation

The court encourages the parties to exchange settlement proposals prior to the conference. The court also encourages counsel to consider providing opposing parties with a summary of the party's view of the facts of the case and of a party's position on critical legal issues.

Counsel might also consider preparing a draft release prior to the settlement conference, leaving blank the amount of any monetary settlement. With that preparation, if a case is resolved at the conference, it is sometimes possible for a release to be signed at the conclusion of the conference.

Required Settlement Statements

At least **five court days** prior to the conference, each party shall submit a confidential settlement statement to the magistrate judge. The settlement statement generally **should not exceed fifteen pages double-spaced**. The settlement statement shall not become a part of the file of the case but shall be for the exclusive use of the magistrate judge in preparing for and conducting the settlement conference.

Each party's settlement statement shall include (1) a description of the factual background, including disputed fact issues; (2) identification of important legal issues; (3) a description of damages, including a description of the party's basis for its calculation of claimed damages; (4) a description of any other interests that may be relevant to settlement or potential barriers to settlement; and (5) the party's position on settlement, including a present settlement proposal, and a report on settlement efforts to date. If not already part of the court file, copies of any critical agreements, business records, photographs or other documents or exhibits may be attached to the settlement statement. A chronological outline of critical events may be helpful to the magistrate judge. The parties are encouraged to be candid in their confidential statements.

The settlement statement shall not be filed with the clerk, but shall be e-mailed to ndd_J-Senechal@ndd.uscourts.gov, or mailed to the magistrate judge at Quentin N. Burdick U.S. Courthouse, 655 1st Avenue North, Suite 440, Fargo, ND 58102. Copies of the settlement statement shall not be provided to the other parties in the case.

Following receipt of the settlement statements, the magistrate judge may arrange **ex parte** conferences with counsel to request additional information, or to clarify information presented in the settlement statements.

Settlement Conference Procedures

Generally, the settlement conference will begin with a brief joint session, during which the magistrate judge will discuss the process of, and expectations for, the conference. The joint session may be held either in the courtroom or in chambers. Following that joint session, the magistrate judge will have a series of separate conferences with each party and the party's counsel. Content of discussions during the separate conferences will remain confidential unless disclosure to other participants is

authorized. Content of discussions during the separate conferences will not be disclosed to the trial judge.

If the parties reach an agreement for resolution of the case, the court will arrange to make a record of the terms of the parties' agreement, and will set a deadline for submission of closing documents.

Dated this 26th day of August, 2021.

/s/ Alice R. Senechal

Alice R. Senechal

United States Magistrate Judge